

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

OCT 30 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JESSIE JAMES ROBINSON,

Appellant.

2 CA-CR 2008-0038
DEPARTMENT A

MEMORANDUM DECISION
Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20064108

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED AS MODIFIED

Law Offices of DiCampi, Elsberry & Hunley, LLC
By Anne Elsberry

Tucson
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 A jury found Jessie James Robinson guilty of aggravated driving while under the influence of an illegal drug, aggravated driving with an alcohol concentration of .08 or more, and aggravated driving under the influence of an intoxicant, all while his driver's license was suspended, revoked, or restricted. The trial court sentenced Robinson to

concurrent, substantially mitigated prison terms of six years on each count. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has diligently reviewed the record and has found no arguable issue to raise on appeal. Robinson has not filed a supplemental brief.

¶2 We view the evidence in the light most favorable to sustaining the verdicts. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). There was sufficient evidence to support the jury’s findings of guilt. *See* A.R.S. §§ 28-1381, 28-1383.

¶3 Counsel briefly mentions, without more, two issues that Robinson asked her to raise on appeal: whether the officer’s statements were inconsistent and whether “the current questions being raised” in the courts regarding the operation of the Intoxilyzer 8000 applied to his case. We have reviewed these issues and find they do not raise any fundamental, reversible error.

¶4 In her recitation of the case, counsel correctly notes that the sentencing minute entry incorrectly states that presumptive prison terms¹ were imposed, but the sentencing transcript reflects the trial court imposed substantially mitigated terms. The trial court told Robinson, “I really do have a lot of sympathy for you. Because I know you have been working so hard to try to make your life better,” and added that it would “do what [it could]” to exercise discretion in Robinson’s favor. After finding as mitigating factors Robinson’s acceptance of responsibility, his employment status, his difficult childhood, his

¹The presumptive prison term is ten years. *See* A.R.S. § 13-604(C).

remorse, his rehabilitation efforts, and his having volunteered in the community, the court concluded that the mitigating factors outweighed the aggravating factors. The court noted that it was imposing “the best” sentence it could for Robinson and that it appreciated the respect Robinson had shown to the court. The court then imposed substantially mitigated sentences. Because the record in this matter leaves no doubt what the court intended, *see State v. Bowles*, 173 Ariz. 214, 216, 841 P.2d 209, 211 (App. 1992), the sentencing order shall be modified to reflect the imposition of substantially mitigated sentences. *See also State v. Leon*, 197 Ariz. 48, n.3, 3 P.3d 968, 969 n.3 (App. 1999) (when oral pronouncement of sentence and minute entry conflict, oral pronouncement controls).

¶4 We also note the trial court found that Robinson had at least two historical prior felony convictions. We therefore further modify the sentencing order to reflect Robinson’s conviction of repetitive offenses.

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. We affirm Robinson’s convictions and sentences as modified.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge